



U.S. Citizenship
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FILE:

EAC 01 102 53583

Office: VERMONT SERVICE CENTER

Date: APR 26 2004

IN RE:

Petitioner:
Beneficiary:

PETITION: Petition for Special Immigrant Battered Spouse pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen was timely filed. The matter is now again before the AAO. The motion will be granted and the petition will be denied.

The petitioner is a 36-year old native of the former Soviet Union and citizen of Kyrgyzstan who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. According to the evidence on the record, the petitioner wed her United States citizen spouse on October 9, 1999 in Kyrgyzstan, and resided with him for one week in Kyrgyzstan before her spouse returned to the United States. The petitioner entered the United States on June 9, 2000 as a CR-1 conditional permanent resident. On June 10, 2000, the petitioner was arrested in a domestic violence incident and was removed from her home. The petitioner filed the instant petition on February 29, 2001. In a decision dated March 29, 2002, the director denied the petition, finding that the petitioner failed to establish that she: (1) has resided in the United States with the citizen spouse; (2) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen spouse during the marriage; (3) entered into the marriage to the citizen or lawful permanent resident in good faith; and (4) is a person of good moral character.

On appeal, counsel for the petitioner submitted a brief, an affidavit of the petitioner stating that she lived with her United States citizen spouse in the Kyrgyz Republic, India and the United States, a letter written by a licensed professional counselor, a letter from a domestic violence counselor, a letter from the executive director of Home Front, an affidavit of a friend of the petitioner and her spouse, and a certification from Stacy Cohen, the petitioner's former attorney.

After a careful review of all the evidence on the record, the AAO dismissed the appeal on November 6, 2002. The discussion will not be repeated here.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

On motion, counsel submits a statement from the petitioner's former attorney as new evidence and indicates that he intends to submit additional evidence. Nothing further was submitted for the record.

The new evidence submitted on motion is a statement from the petitioner's former counsel indicating that she had been told by the municipal prosecutor's office that the petitioner's citizen spouse had repeatedly demanded that the authorities arrest the petitioner. She further indicated that contempt charges made against the petitioner were dropped and that the petitioner's spouse was intent upon having the petitioner deported as revenge for the failed marriage.

Even if every assertion in the petitioner's former attorney's statement is considered, the petitioner has failed to overcome all of the director's objections to approving the petition. The petitioner failed to establish that she had been battered by or has been the subject of extreme cruelty perpetuated by the United States citizen spouse. She failed to establish the bona fides of the marriage. The record is devoid of evidence that the petitioner and her spouse commingled their financial assets or shared liabilities.

In the director's decision dated May 29, 2002, the director denied the petition, in part, because the petitioner failed to establish that she had resided with the United States citizen spouse *in the United States*. This portion of the director's decision shall be withdrawn. In 2000, Congress amended the Act so that the law now provides that the self-petitioner must have resided with the abuser but not necessarily in the United States. Pub.L. 106-386, § 1503(b)(1)(A).

The director further determined that the petitioner had failed to establish that she was a person of good moral character based, in part, upon evidence in the record showing that she had been arrested for committing assault on her spouse by slapping him in the face with her hand, thereby injuring his face (N.J.S. 2C:12-1a.(1)). A warrant was issued her arrest for failure to appear in court. According to the former counsel's statement provided on motion, the charge was dismissed. In the absence of evidence of the final disposition from the court, this issue cannot be resolved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the petition will be denied.

ORDER: The petition is denied.